

TIMOTHY C. FOX  
Montana Attorney General  
ALAN JOSCELYN  
Deputy Attorney General  
JEREMIAH D. WEINER  
Assistant Attorney General  
MARK C. PHARES  
Special Assistant Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, Montana 59620-1401  
(406) 444-2026

*Attorneys for Amicus Curiae  
State of Montana*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

ALLIANCE FOR THE WILD ) Civil Cause No:  
ROCKIES, ) 9:15-cv-00054-DLC

**Plaintiff,**

V.

CHRISTOPHER SAVAGE, et al.,  
Defendants,

## Defendants.

and

KOOTENAI FOREST  
STAKEHOLDERS COALITION, a  
Montana Corporation and LINCOLN  
COUNTY, a political subdivision of the  
State of Montana,

**DECLARATION OF  
ROBERT A. HARRINGTON**

## Defendant-Intervenors.

I, Robert A. Harrington, in accordance with the requirements of 28 U.S.C. § 1746, declare that:

1. I am and have been since January 2003 the Administrator for the Montana Department of Natural Resources and Conservation's ("DNRC") Forestry Division, also commonly referred to the "Montana State Forester."
2. In my capacity as the Montana State Forester, I have for the last ten years been engaged with the USDA Forest Service (USFS) Renewable Resource Management Programs, and have led efforts for the State of Montana to advocate on behalf of the agency to implement vegetation management. I am very familiar with the landscape and specific treatments proposed on the East Reservoir Project ("Project"), which is the subject of the above-captioned law suit.
3. As the Montana State Forester, I am intimately familiar with the various programs the DNRC Forestry Division administers, including its forest practices, forest landowner assistance, fire protection, and forest policy programs.
4. The DNRC Forestry Division programs that have relevance and application to the State of Montana's Amicus Curiae Brief in this litigation are as follows:
  - a. Wildland Fire Protection: The DNRC directly protects 5.1 million acres of private, state, and federal lands from wildland fire. Direct protection means that DNRC trucks, firefighters and helicopters have responsibility to provide initial and extended attack on new fire starts. The

DNRC also provides assistance to counties in the protection of 45 million acres of state and private lands, and provides assistance as needed to federal agencies in the protection of state and private lands under federal fire protection. Assistance is provided through DNRC-owned resources such as wildland fire engines, helicopters, and firefighters, fire managers, and incident management teams. Although the Project area occurs in an area of USFS wildland fire protection, DNRC fire protection lies directly adjacent to the USFS wildland fire protection area, and wildfires in the area are routinely managed using resources from both agencies.

b. Hazardous Fuels Mitigation: Since 2001, the DNRC has administered roughly \$24 million of cost-share fuels projects primarily on private lands to help reduce fire risk in the Wildland-Urban Interface. The DNRC has provided cost-share assistance around population centers such as the Helena area, the Flathead valley, Kootenai River valley, Bitterroot valley, Seeley Lake, Missoula, Gallatin valley, and the Yellowstone and Musselshell valleys near Billings and Roundup.

c. Forest Health Program: The DNRC provides technical and/or cost-share assistance funds to help private and state forest landowners respond to forest insect and disease infestations. Such projects also help reduce potential fire behavior in forests affected by insects and disease. The DNRC

has provided similar assistance with improving forest health on private and state lands in throughout the state.

d. State Forest Assessment/Forest Action Plan: In 2010, the DNRC Forestry Division completed a “Statewide Assessment of Forest Resources and Response Strategy” that was based upon 5<sup>th</sup>-order watersheds - or “hydrologic unit code” - around the state. This Strategy identified the following “focus areas” that help prioritize watersheds for investment of forestry assistance programs:

- i. Forest Biodiversity and Resilient Forests;
- ii. Wildfire and Public Safety;
- iii. Forest Products and Biomass Utilization;
- iv. Sustainable Urban Forest Landscapes; and,
- v. Changing Forest Ownership Patterns.

e. Forest Policy: Since 2004, the DNRC Forestry Division has responded to new state and federal legislation that authorizes the state to engage directly in the management of federal forest lands, and focused on developing and implementing state policy related to federal forest management. This program has helped clarify and define state policy relating to active forest management, forest restoration and wildlife habitat improvement, wildfire risk reduction, watershed protection, and has

advocated for a viable forest industry and for rural timber economies in the state. These efforts have been the foundation of Governor Bullock's "Forest in Focus Initiative" which aims to improve the health and reduce wildfire risks of all forests and forested watersheds in Montana, while maintaining an integrated forest industry.

5. The fire protection in the immediate Project area is the responsibility of both the USFS and the State of Montana, with the State having direct-protection responsibility on 1,303 acres. The State's direct protection responsibility also extends to roughly 50% of the southern and eastern boundaries of the Project area.

6. In the Project area, safe and aggressive initial attack and unified command among local, state, and federal wildfire agencies is used for wildland fires to minimize fire spread and threats to firefighters, the public, and property. When the fire location is determined, the entities with primary protection responsibility establish unified command and the other fire entities will be present in a mutual aid capacity. It is probable that any large wildfire occurring within the Project area would involve DNRC firefighting resources and managers, and involve the expenditure of significant state funds directly related to the fire suppression efforts.

7. In the past five years, the DNRC has expended substantial funds suppressing fires throughout Montana. A summary of these costs is as follows:

Fiscal Year	Total Cost	Reimbursements	Net Cost
2010	\$6,695,714	(\$1,047,748)	\$5,647,966
2011	\$3,293,346	(\$807,571)	\$2,485,775
2012	\$20,357,103	(\$3,596,721)	\$16,760,382
2013	\$71,224,976	(\$14,000,275)	\$57,224,701
2014	\$19,658,832	(\$8,038,987)	\$11,619,844

8. The DNRC is the State's lead wildland firefighting agency. It is member of the Northern Rockies Coordinating Group ("NRCG"), comprised of federal, state, and local government firefighting and law enforcement agencies in Montana, Northern Idaho, North Dakota and part of South Dakota and Wyoming.

(<http://www.fs.fed.us/r1/fire/nrcg/>) NRCG coordinates wildland firefighting in these regions, dispatching resources to the highest priority wildfires consistent with regional and national dispatch and fire management agreements. When wildfires escape initial attack, they are managed by progressively larger and more qualified incident management teams. The DNRC works with federal partners to suppress fires on federal lands and federal partners work with the DNRC and counties to suppress fires on state and private lands. Fire does not recognize ownership boundaries and the condition of forest and rangeland fuels on one land ownership affects the ability to fight fire of the other.

9. In the last five years, the DNRC has participated in fire suppression on numerous wildfires originating on federal lands. Of these fires, a significant number moved onto adjacent private or state lands. Given the forest fuel condition and remote location, a wildland fire originating in the Project area during high to

severe fire danger could spread to adjacent state and private lands. During the 2015 fire season, the Dunn and Weigle fires burned 65 and 94 acres respectively within or adjacent to the East Reservoir project area. These fires were managed with both USFS and DNRC personnel, although the majority of the acreage burned was on Montana DNRC fire protection. Past forest management activities similar to those proposed on this Project were instrumental in fire managers' ability to quickly and safely contain these fires. In the long term, the ability of local, state, and federal government firefighters to respond safely to wildfires, protect communities, and for Montanans to enjoy healthy, resilient forest landscapes depends on efforts such as those proposed in the East Reservoir Project.

10. The Project addresses many issues important to the state of Montana, and to priorities clearly identified by the administration of Governor Steve Bullock:

- a. Landscape Scale Forest Restoration
  - i. Acres Treated:
    - 1) Commercial timber harvest--8,845 acres of timber harvest and associated fuel treatment.
    - 2) Non-commercial thinning-- 5,775 acres to improve growing conditions and increase composition of shade tolerant species in managed sapling-sized stands.

- 3) Prescribed Fire-Prescribed fire will be used to reduce hazardous fuel loadings on treatment units, create fuel breaks along ridge lines, and restore natural fire regimes. Prescribed fire treatments will be completed on approximately 4,257 acres.

ii. Farm Bill Priority Landscape Designation:

The project is 100% within the 2014 Farm Bill priority landscape areas nominated by Governor Bullock and designated by the Secretary of Agriculture.

b. Collaboration and Partnerships:

The Forests in Focus Initiative encourages collaboration and partnerships from diverse stakeholders to help meet Montana's forest restoration challenges. The East Reservoir project is supported by the Kootenai Valley Stakeholders Group, of which Montana DNRC's Libby Unit Manager is a member.

Reference: August 14, 2013 letter on the East Reservoir DEIS.

c. Wildfire Risk Reduction

i. Acres of State wildland fire protection within project area:

- 1) There are 1,303 acres of state fire protection within project area boundary. This area located in southwest portion of project area.
  - 2) Adjacent State Fire Projects borders close to 50% of the project area primarily on southern and eastern extent.
- ii. State/private lands within/adjacent to project area-
    - 1) Total State Trust Lands: 4,335 acres
      - a) Within: 4,092 acres
      - b) Adjacent: 243 acres
    - 2) Non-industrial Private lands- 1,322 acres within the project boundary
  - d. Commercial Sawlogs and Jobs for Forest Industry
    - i. 39 Million Board Feet
    - ii. 61,000 tons of non-sawlog material
    - iii. 629 jobs retained-produced
    - iv. Three Montana sawmills are potentially affected/harmed by injunction or cancellation of this project. See the Declarations of Economic Harm from Tricon Timber LLC (attached hereto as Exhibit 1), F.H. Stoltze Land and Lumber Company (attached hereto as Exhibit 2), and Thompson River Lumber

Company (attached hereto as Exhibit 3). The estimated commercial sawlog volume produced by this Project is substantial, and essential to the continued viability of the forest industry in the four-county area of northwestern Montana. There will also be additional benefits to Montana's secondary wood products businesses in and around the project area that utilize smaller diameter material for post and poles or pulp and paper fiber.

v. Retaining Montana's logging and mill infrastructure is integral to maintaining markets for forest products, ensuring the state's ability to manage forested state trust lands to derive revenue for trust beneficiaries, as well as providing markets for forest products from tribal and private lands.

e. Asbestos Contamination west of project area – Operable Unit 3 (“OU3”) and beyond:

i. The East Reservoir project area lies within the EPA's National Priority Listing (NPL) for Libby Amphibole Asbestos Superfund site. The Project area is immediately east of Operable Unit (OU) 3, an area contaminated with asbestos from the W.R. Grace Vermiculite Mine.

ii. The risks posed to the public from wildfires in this area, including to the city of Libby, have been the subject of significant discussion over the past five years among the U.S. Environmental Protection Agency, the USFS, the DNRC, Lincoln County, and the Montana Department of Environmental Quality. The DNRC and the USFS have jointly formed an initial attack crew that is specifically trained and equipped to safely fight a wildfire within OU3. This has required the investment of significant financial and human resources to develop response protocols and obtain necessary personal protective equipment, including but not limited to respirators, to protect firefighters against potential airborne asbestos particles occurring in wildland fire smoke or dust created from suppression activities.

iii. Wildland fires in northwest Montana routinely occur during weather patterns of high daytime temperatures and cooler nighttime temperatures, which can cause strong inversions that trap wild land fire smoke in the valley bottoms. Wildfires occurring within OU3 could cause significant asbestos particles to become airborne in smoke and transported

by convection columns long distances, only to be trapped in inversions during evening periods. This creates the potential for a catastrophic health risk to residents in the Kootenai and Flathead River valleys and beyond.

iv. The short and long-term objective of land and fire managers has been to reduce fuels within and adjacent to OU3. The East Reservoir Project is important to that objective.

f. Transportation management and access to/through state lands:

Access to much of the 4,335 acres of state trust lands in the project area depends on the ability to utilize USFS roads that either will be used or constructed as a part of this Project. The reverse is also true: the USFS relies on access through state trust lands to manage some of their lands in the Project area.

Access is critical for both the sustainable management of these forest lands, and the ability to provide safe and effective wildland fire protection. See January 21, 2011 letter from Mark Peck to Malcolm Edwards (attached hereto as Exhibit 4).

g. Grizzly Bear Management

i. The DNRC took part in the National Environmental Policy Act (“NEPA”) scoping process for Kootenai Forest Plan

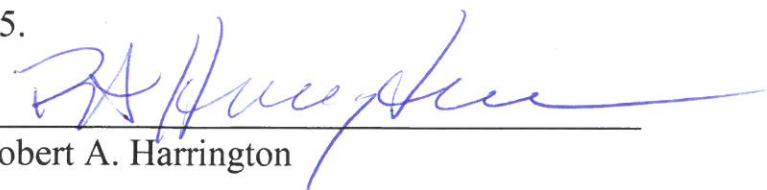
amendments related to motorized access by submitting a letter dated June 16, 2009 to the USFS, a copy of which is attached hereto as Exhibit 5.

- ii. As evidenced by this letter, the DNRC has long advocated that the recovery of the Grizzly Bear (and other threatened or endangered species) and forest management are not mutually exclusive. The DNRC maintains that the Kootenai National Forest Plan provides adequate protection for threatened and endangered species, and should allow science-based, sustainable forest management projects such as the East Reservoir projects to be implemented.

11. In addition, the DNRC is a member of the Defendant-Intervenor Kootenai Forest Stakeholders Coalition, and has long supported this group's activities to develop consensus around USFS forest management projects on the Kootenai National Forest. The DNRC supports its intervention in this matter. The DNRC also has a strong partnership with Lincoln County in management of state trust lands and providing wildland fire protection, and also supports its intervention in this matter.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 30<sup>th</sup> day of November 2015.

  
\_\_\_\_\_  
Robert A. Harrington